

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1854
96TH GENERAL ASSEMBLY

5726L.05C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 135.1150, 208.152, 209.202, 288.034, and 304.028, RSMo, and to enact in lieu thereof eight new sections relating to services provided to individuals with disabilities, with a penalty provision and an expiration date for a certain section.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 135.1150, 208.152, 209.202, 288.034, and 304.028, RSMo, are
2 repealed and eight new sections enacted in lieu thereof, to be known as sections 34.450,
3 135.1150, 135.1180, 161.870, 208.152, 209.202, 288.034, and 304.028, to read as follows:

34.450. 1. As used in this section, the following terms shall mean:

- 2 **(1) "Agency", includes any political subdivision of the state having its own**
3 **purchasing agency, such as a county, municipality, school district, or other public body,**
4 **that is supported in whole or in part by funds appropriated by the general assembly;**
5 **(2) "Board", the purchasing from persons with disabilities advisory board as**
6 **established under this section;**
7 **(3) "Direct labor", all work performed to fulfill a contract under the provisions of**
8 **this section, excluding supervision and administration;**
9 **(4) "Qualifying disability", a significant mental or physical impairment, including**
10 **blindness, that impedes a person who is seeking, entering, or maintaining gainful**
11 **employment. Such significant disability shall be certified by the division of vocational**
12 **rehabilitation within the department of elementary and secondary education; the Social**
13 **Security Administration Title 42, Section 423 of the United States Code; the Social Security**
14 **Administration Title 42, Section 416(i)(1)(B) of the United States Code; or enrolled in a**
15 **Medicaid waiver program as administered by the division of developmental disabilities**
16 **within the department of mental health;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **(5) "Qualifying vendor", a person with a qualifying disability; or a business or**
18 **entity, whether for profit or nonprofit, that employs individuals with a qualifying disability**
19 **to perform at least seventy-five percent of the direct labor hours required to fulfill a state**
20 **contract for goods or services. Any nonprofit agency serving people with significant**
21 **disabilities that meets the eligibility criteria to participate in the federal AbilityOne**
22 **program, or its successor program, as described in 41 U.S.C. Section 46-48c shall be**
23 **deemed a qualifying vendor for the purposes of this section. Suspected violations of the**
24 **eligibility criteria to participate in the provisions of this section may be reported to and**
25 **shall be investigated by the state auditor.**

26 **3. There is hereby created the "Purchasing from Persons with Disabilities Advisory**
27 **Board" within the division of purchasing of the office of administration. The board shall**
28 **be comprised of seven members as follows: the director of the division of purchasing in the**
29 **office of administration; the director of the division of vocational rehabilitation in the**
30 **department of elementary and secondary education; the president pro tem of the senate;**
31 **the speaker of the house of representatives; one advocate that shall represent the interests**
32 **of the blind that is employed by a nonprofit agency serving people who are blind; one**
33 **advocate that shall represent the interests of persons with significant disabilities other than**
34 **the blind that is employed by a nonprofit agency serving persons with significant**
35 **disabilities other than the blind; and one person that shall represent the interests of the**
36 **private business community. Such members shall be appointed by the governor with the**
37 **advice and consent of the senate.**

38 **4. The board shall meet as necessary to provide oversight for the division of**
39 **purchasing within the office of administration in carrying out the purposes of this section.**
40 **The division of purchasing within the office of administration shall facilitate the**
41 **procurement of goods and services from qualifying vendors; develop and maintain a list**
42 **of goods and services that are available from qualifying vendors and which such division**
43 **determines are suitable for procurement by agencies of the state under this section;**
44 **approve prices for goods and services identified under this section; review bids received**
45 **by qualifying vendors; and award and renew contracts for the purchase of goods and**
46 **services under this section without competitive bidding. Such procurement list, and**
47 **revision thereof, shall be distributed to all purchasing officers of the state and its political**
48 **subdivisions. All products offered for purchase to a state agency or political subdivision**
49 **by a qualifying vendor shall have significant value added by blind or significantly disabled**
50 **persons as determined by the office of administration.**

51 **5. The provisions of this section shall not be subject to the provisions of this**
52 **chapter. The amount of goods and services that must be purchased in accordance with this**
53 **section shall not exceed twenty-five million dollars unless increased by the board.**

54 **6. It shall be the duty of the office of administration to determine the fair market**
55 **price of all products and services offered for sale to the various agencies of the state by**
56 **qualifying vendors. The fair market price shall, at a minimum, recover for the qualifying**
57 **vendor the cost of raw materials, labor, overhead, and delivery, and shall be revised from**
58 **time to time in accordance with changing cost factors. The office of administration shall**
59 **make such rules and regulations necessary to carry out the purposes of this section**
60 **including specifications, time of delivery, and assignment of products and services to be**
61 **supplied by qualifying vendors and other relevant matters of procedure. The use of the**
62 **products and services as determined by the office of administration is mandatory for all**
63 **state agencies. The office of administration shall authorize the purchase of products and**
64 **services elsewhere when requisitions cannot reasonably be fulfilled by a qualifying vendor.**

65 **7. In assessing the suitability of any potential addition to the procurement list, the**
66 **office of administration shall consider the interest of small and disadvantaged-owned**
67 **businesses by determining whether the addition would have a severe adverse impact on the**
68 **current contractor for the commodity or service. As general guidelines, an impact of no**
69 **more than fifteen percent of the contract's overall business would not be deemed severe.**
70 **However, in deciding whether a proposed addition to the procurement list would have a**
71 **severe adverse impact on the current contractor, the office of administration may consider:**

72 **(1) Financial and employment information provided by the current contractor**
73 **regarding the impact on the contractor's sales;**

74 **(2) Whether the contractor has been a consistent supplier of the commodity or**
75 **service and, therefore, more dependent on such sales; and**

76 **(3) Any other factor the office of administration deems relevant.**

77 **8. A fee of no more than one percent of the gross value of any contract awarded to**
78 **a qualifying vendor under the provisions of this section shall be collected by the office of**
79 **administration to cover the cost of administration of this section.**

80 **9. Except as otherwise provided in this section, all agencies shall purchase goods**
81 **and services produced by a qualifying vendor using the preferred procurement contract**
82 **list established in subsection 7 of this section if:**

83 **(1) The goods or services offered for sale by a qualifying vendor reasonably**
84 **conforms to the needs and specifications of the agency;**

85 **(2) The qualifying vendor can supply the goods or services within a reasonable**
86 **time; and**

87 **(3) The price of the goods or services is competitive with the cost of procuring the**
88 **goods or services from another source.**

 135.1150. 1. This section shall be known and may be cited as the "Residential
2 Treatment Agency Tax Credit Act".

3 2. As used in this section, the following terms mean:

4 (1) "Certificate", a tax credit certificate issued under this section;

5 (2) "Department", the Missouri department of social services;

6 (3) "Eligible donation", donations received from a taxpayer by an agency that are used
7 solely to provide direct care services to children who are residents of this state. Eligible
8 donations may include cash, publicly traded stocks and bonds, and real estate that will be valued
9 and documented according to rules promulgated by the department of social services. For
10 purposes of this section, "direct care services" include but are not limited to increasing the
11 quality of care and service for children through improved employee compensation and training;

12 (4) "Qualified residential treatment agency" or "agency", a residential care facility that
13 is licensed under section 210.484, accredited by the Council on Accreditation (COA), the Joint
14 Commission on Accreditation of Healthcare Organizations (JCAHO), or the Commission on
15 Accreditation of Rehabilitation Facilities (CARF), and is under contract with the Missouri
16 department of social services to provide treatment services for children who are residents or
17 wards of residents of this state, and that receives eligible donations. Any agency that operates
18 more than one facility or at more than one location shall be eligible for the tax credit under this
19 section only for any eligible donation made to facilities or locations of the agency which are
20 licensed and accredited;

21 (5) "Taxpayer", any of the following individuals or entities who make an eligible
22 donation to an agency:

23 (a) A person, firm, partner in a firm, corporation, or a shareholder in an S corporation
24 doing business in the state of Missouri and subject to the state income tax imposed in chapter
25 143;

26 (b) A corporation subject to the annual corporation franchise tax imposed in chapter 147;

27 (c) An insurance company paying an annual tax on its gross premium receipts in this
28 state;

29 (d) Any other financial institution paying taxes to the state of Missouri or any political
30 subdivision of this state under chapter 148;

31 (e) An individual subject to the state income tax imposed in chapter 143;

32 (f) Any charitable organization which is exempt from federal income tax and whose
33 Missouri unrelated business taxable income, if any, would be subject to the state income tax
34 imposed under chapter 143.

35 3. For all taxable years beginning on or after January 1, 2007, any taxpayer shall be
36 allowed a credit against the taxes otherwise due under chapter 147, 148, or 143, excluding
37 withholding tax imposed by sections 143.191 to 143.265, in an amount equal to fifty percent of
38 the amount of an eligible donation, subject to the restrictions in this section. The amount of the
39 tax credit claimed shall not exceed the amount of the taxpayer's state income tax liability in the
40 tax year for which the credit is claimed. Any amount of credit that the taxpayer is prohibited by
41 this section from claiming in a tax year shall not be refundable, but may be carried forward to
42 any of the taxpayer's four subsequent taxable years.

43 4. To claim the credit authorized in this section, an agency may submit to the department
44 an application for the tax credit authorized by this section on behalf of taxpayers. The
45 department shall verify that the agency has submitted the following items accurately and
46 completely:

47 (1) A valid application in the form and format required by the department;

48 (2) A statement attesting to the eligible donation received, which shall include the name
49 and taxpayer identification number of the individual making the eligible donation, the amount
50 of the eligible donation, and the date the eligible donation was received by the agency; and

51 (3) Payment from the agency equal to the value of the tax credit for which application
52 is made. If the agency applying for the tax credit meets all criteria required by this subsection,
53 the department shall issue a certificate in the appropriate amount.

54 5. An agency may apply for tax credits in an aggregate amount that does not exceed
55 [forty percent of] the payments made by the department to the agency in the preceding twelve
56 months.

57 6. Tax credits issued under this section may be assigned, transferred, sold, or otherwise
58 conveyed, and the new owner of the tax credit shall have the same rights in the credit as the
59 taxpayer. Whenever a certificate is assigned, transferred, sold, or otherwise conveyed, a
60 notarized endorsement shall be filed with the department specifying the name and address of the
61 new owner of the tax credit or the value of the credit.

62 7. The department shall promulgate rules to implement the provisions of this section.
63 Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the
64 authority delegated in this section shall become effective only if it complies with and is subject
65 to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and
66 chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant
67 to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are
68 subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed
69 or adopted after August 28, 2006, shall be invalid and void.

70 8. Under section 23.253 of the Missouri sunset act:

71 (1) [The provisions of the new program authorized under this section shall automatically
72 sunset six years after August 28, 2006, unless reauthorized by an act of the general assembly; and

73 (2) If such program is reauthorized,] The program authorized under this section shall
74 [automatically sunset twelve years after the effective date of the reauthorization of this section]
75 **expire on December 31, 2015; and**

76 [(3)] (2) This section shall terminate on September [first of the calendar year
77 immediately following the calendar year in which the program authorized under this section is
78 sunset] **1, 2016.**

**135.1180. 1. This section shall be known and may be cited as the "Developmental
2 Disability Care Provider Tax Credit Program".**

3 **2. As used in this section, the following terms mean:**

4 **(1) "Certificate", a tax credit certificate issued under this section;**

5 **(2) "Department", the Missouri department of social services;**

6 **(3) "Eligible donation", donations received, by a provider, from a taxpayer that are
7 used solely to provide direct care services to persons with developmental disabilities who
8 are residents of this state. Eligible donations may include cash, publicly traded stocks and
9 bonds, and real estate that will be valued and documented according to rules promulgated
10 by the department of social services. For purposes of this section, "direct care services"
11 include, but are not limited to, increasing the quality of care and service for persons with
12 developmental disabilities through improved employee compensation and training;**

13 **(4) "Qualified developmental disability care provider" or "provider", a care
14 provider that provides assistance to persons with developmental disabilities, and is
15 accredited by the Council on Accreditation (COA), the Joint Commission on Accreditation
16 of Healthcare Organizations (JCAHO), or the Commission on Accreditation of
17 Rehabilitation Facilities (CARF), or is under contract with the Missouri department of
18 social services or department of mental health to provide treatment services for such
19 persons, and that receives eligible donations. Any provider that operates more than one
20 facility or at more than one location shall be eligible for the tax credit under this section
21 only for any eligible donation made to facilities or locations of the provider which are
22 licensed or accredited;**

23 **(5) "Taxpayer", any of the following individuals or entities who make an eligible
24 donation to a provider:**

25 **(a) A person, firm, partner in a firm, corporation, or a shareholder in an S
26 corporation doing business in the state of Missouri and subject to the state income tax
27 imposed in chapter 143;**

28 **(b) A corporation subject to the annual corporation franchise tax imposed in**
29 **chapter 147;**

30 **(c) An insurance company paying an annual tax on its gross premium receipts in**
31 **this state;**

32 **(d) Any other financial institution paying taxes to the state of Missouri or any**
33 **political subdivision of this state under chapter 148;**

34 **(e) An individual subject to the state income tax imposed in chapter 143;**

35 **(f) Any charitable organization which is exempt from federal income tax and whose**
36 **Missouri unrelated business taxable income, if any, would be subject to the state income**
37 **tax imposed under chapter 143.**

38 **3. For all taxable years beginning on or after January 1, 2012, any taxpayer shall**
39 **be allowed a credit against the taxes otherwise due under chapter 143, 147, or 148**
40 **excluding withholding tax imposed by sections 143.191 to 143.265 in an amount equal to**
41 **fifty percent of the amount of an eligible donation, subject to the restrictions in this section.**
42 **The amount of the tax credit claimed shall not exceed the amount of the taxpayer's state**
43 **income tax liability in the tax year for which the credit is claimed. Any amount of credit**
44 **that the taxpayer is prohibited by this section from claiming in a tax year shall not be**
45 **refundable, but may be carried forward to any of the taxpayer's four subsequent taxable**
46 **years.**

47 **4. To claim the credit authorized in this section, a provider may submit to the**
48 **department an application for the tax credit authorized by this section on behalf of**
49 **taxpayers. The department shall verify that the provider has submitted the following items**
50 **accurately and completely:**

51 **(1) A valid application in the form and format required by the department;**

52 **(2) A statement attesting to the eligible donation received, which shall include the**
53 **name and taxpayer identification number of the individual making the eligible donation,**
54 **the amount of the eligible donation, and the date the eligible donation was received by the**
55 **provider; and**

56 **(3) Payment from the provider equal to the value of the tax credit for which**
57 **application is made. If the provider applying for the tax credit meets all criteria required**
58 **by this subsection, the department shall issue a certificate in the appropriate amount.**

59 **5. Tax credits issued under this section may be assigned, transferred, sold, or**
60 **otherwise conveyed, and the new owner of the tax credit shall have the same rights in the**
61 **credit as the taxpayer. Whenever a certificate is assigned, transferred, sold, or otherwise**
62 **conveyed, a notarized endorsement shall be filed with the department specifying the name**
63 **and address of the new owner of the tax credit or the value of the credit.**

64 **6. The department shall promulgate rules to implement the provisions of this**
65 **section. Any rule or portion of a rule, as that term is defined in section 536.010, that is**
66 **created under the authority delegated in this section shall become effective only if it**
67 **complies with and is subject to all of the provisions of chapter 536, and, if applicable,**
68 **section 536.028. This section and chapter 536, are nonseverable and if any of the powers**
69 **vested with the general assembly pursuant to chapter 536, to review, to delay the effective**
70 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**
71 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2012,**
72 **shall be invalid and void.**

73 **7. Under section 23.253 of the Missouri sunset act:**

74 **(1) The provisions of the new program authorized under this section shall**
75 **automatically sunset on December 31, 2016, unless reauthorized by an act of the general**
76 **assembly; and**

77 **(2) If such program is reauthorized, the program authorized under this section**
78 **shall automatically sunset twelve years after the effective date of the reauthorization of this**
79 **section; and**

80 **(3) This section shall terminate on September first of the calendar year immediately**
81 **following the calendar year in which the program authorized under this section is sunset.**

161.870. 1. By September 1, 2012, the department of elementary and secondary
2 **education shall establish a work group to assess the available resources needed for effective**
3 **work experiences for students and young adults with disabilities. The work group shall**
4 **review all interagency coordination of services that match young adults who have**
5 **disabilities with employers who need employees to ensure that these services are adequately**
6 **meeting the following needs of students and young adults with disabilities who seek**
7 **employment and need assistance with job placement:**

8 **(1) Recruitment;**

9 **(2) Assessment;**

10 **(3) Counseling;**

11 **(4) Pre-employment skills training;**

12 **(5) Vocational training;**

13 **(6) Student wages for try-out employment;**

14 **(7) Placement in unsubsidized employment; and**

15 **(8) Other assistance with transition to a quality adult life.**

16 **2. The goal of the work group shall be to evaluate the current efforts and available**
17 **resources and to promote the involvement of key stakeholders including students, families,**
18 **educators, employers and other agencies in planning and implementing an array of services**

19 that will culminate in successful student transition to employment, lifelong learning, and
20 quality of life. The work group shall focus on secondary students and young adults with
21 disabilities.

22 **3. The work group shall:**

23 **(1) Assess the strengths and need for improvement in services for transition services,**
24 **instruction, and experiences that reinforce core curriculum concepts and skills leading to**
25 **gainful employment for students and young adults with disabilities;**

26 **(2) Determine if any additional state partnerships provided through nonfinancial**
27 **interagency agreements between the department of health and senior services, the**
28 **department of economic development, the department of mental health, or the department**
29 **of social services, or in the private sector, are needed to enhance the employment potential**
30 **of students and young adults with disabilities;**

31 **(3) Focus its efforts in developing careers for students and young adults with**
32 **disabilities, in order to prevent economic and social dependency on state and community**
33 **agencies and resources; and**

34 **(4) Report its findings to the director.**

35 **4. The department of elementary and secondary education shall make**
36 **recommendations based on the findings of the work group and report them to the general**
37 **assembly prior to January 1, 2013.**

38 **5. The work group shall be administered and its members chosen by the**
39 **commissioner of education. Work group members shall include existing personnel and**
40 **human resources available to the department of elementary and secondary education**
41 **including but not limited to representatives from state agencies, local advocacy groups and**
42 **community members with valuable input regarding the needs of disabled students and**
43 **individuals, or members of the general assembly.**

44 **6. The department of elementary and secondary education may promulgate all**
45 **necessary rules and regulations for the administration of this section. Any rule or portion**
46 **of a rule, as that term is defined in section 536.010, that is created under the authority**
47 **delegated in this section shall become effective only if it complies with and is subject to all**
48 **of the provisions of chapter 536 and, if applicable, section 536.028. This section and**
49 **chapter 536 are nonseverable and if any of the powers vested with the general assembly**
50 **pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul**
51 **a rule are subsequently held unconstitutional, then the grant of rulemaking authority and**
52 **any rule proposed or adopted after August 28, 2012, shall be invalid and void.**

208.152. 1. MO HealthNet payments shall be made on behalf of those eligible needy
2 persons as defined in section 208.151 who are unable to provide for it in whole or in part, with

3 any payments to be made on the basis of the reasonable cost of the care or reasonable charge for
4 the services as defined and determined by the MO HealthNet division, unless otherwise
5 hereinafter provided, for the following:

6 (1) Inpatient hospital services, except to persons in an institution for mental diseases who
7 are under the age of sixty-five years and over the age of twenty-one years; provided that the MO
8 HealthNet division shall provide through rule and regulation an exception process for coverage
9 of inpatient costs in those cases requiring treatment beyond the seventy-fifth percentile
10 professional activities study (PAS) or the MO HealthNet children's diagnosis length-of-stay
11 schedule; and provided further that the MO HealthNet division shall take into account through
12 its payment system for hospital services the situation of hospitals which serve a disproportionate
13 number of low-income patients;

14 (2) All outpatient hospital services, payments therefor to be in amounts which represent
15 no more than eighty percent of the lesser of reasonable costs or customary charges for such
16 services, determined in accordance with the principles set forth in Title XVIII A and B, Public
17 Law 89-97, 1965 amendments to the federal Social Security Act (42 U.S.C. 301, et seq.), but the
18 MO HealthNet division may evaluate outpatient hospital services rendered under this section and
19 deny payment for services which are determined by the MO HealthNet division not to be
20 medically necessary, in accordance with federal law and regulations;

21 (3) Laboratory and X-ray services;

22 (4) Nursing home services for participants, except to persons with more than five
23 hundred thousand dollars equity in their home or except for persons in an institution for mental
24 diseases who are under the age of sixty-five years, when residing in a hospital licensed by the
25 department of health and senior services or a nursing home licensed by the department of health
26 and senior services or appropriate licensing authority of other states or government-owned and
27 -operated institutions which are determined to conform to standards equivalent to licensing
28 requirements in Title XIX of the federal Social Security Act (42 U.S.C. 301, et seq.), as
29 amended, for nursing facilities. The MO HealthNet division may recognize through its payment
30 methodology for nursing facilities those nursing facilities which serve a high volume of MO
31 HealthNet patients. The MO HealthNet division when determining the amount of the benefit
32 payments to be made on behalf of persons under the age of twenty-one in a nursing facility may
33 consider nursing facilities furnishing care to persons under the age of twenty-one as a
34 classification separate from other nursing facilities;

35 (5) Nursing home costs for participants receiving benefit payments under subdivision
36 (4) of this subsection for those days, which shall not exceed twelve per any period of six
37 consecutive months, during which the participant is on a temporary leave of absence from the
38 hospital or nursing home, provided that no such participant shall be allowed a temporary leave

39 of absence unless it is specifically provided for in his plan of care. As used in this subdivision,
40 the term "temporary leave of absence" shall include all periods of time during which a participant
41 is away from the hospital or nursing home overnight because he is visiting a friend or relative;

42 (6) Physicians' services, whether furnished in the office, home, hospital, nursing home,
43 or elsewhere;

44 (7) Drugs and medicines when prescribed by a licensed physician, dentist, or podiatrist;
45 except that no payment for drugs and medicines prescribed on and after January 1, 2006, by a
46 licensed physician, dentist, or podiatrist may be made on behalf of any person who qualifies for
47 prescription drug coverage under the provisions of P.L. 108-173;

48 (8) Emergency ambulance services and, effective January 1, 1990, medically necessary
49 transportation to scheduled, physician-prescribed nonelective treatments;

50 (9) Early and periodic screening and diagnosis of individuals who are under the age of
51 twenty-one to ascertain their physical or mental defects, and health care, treatment, and other
52 measures to correct or ameliorate defects and chronic conditions discovered thereby. Such
53 services shall be provided in accordance with the provisions of Section 6403 of P.L. 101-239 and
54 federal regulations promulgated thereunder;

55 (10) Home health care services;

56 (11) Family planning as defined by federal rules and regulations; provided, however, that
57 such family planning services shall not include abortions unless such abortions are certified in
58 writing by a physician to the MO HealthNet agency that, in his professional judgment, the life
59 of the mother would be endangered if the fetus were carried to term;

60 (12) Inpatient psychiatric hospital services for individuals under age twenty-one as
61 defined in Title XIX of the federal Social Security Act (42 U.S.C. 1396d, et seq.);

62 (13) Outpatient surgical procedures, including presurgical diagnostic services performed
63 in ambulatory surgical facilities which are licensed by the department of health and senior
64 services of the state of Missouri; except, that such outpatient surgical services shall not include
65 persons who are eligible for coverage under Part B of Title XVIII, Public Law 89-97, 1965
66 amendments to the federal Social Security Act, as amended, if exclusion of such persons is
67 permitted under Title XIX, Public Law 89-97, 1965 amendments to the federal Social Security
68 Act, as amended;

69 (14) Personal care services which are medically oriented tasks having to do with a
70 person's physical requirements, as opposed to housekeeping requirements, which enable a person
71 to be treated by his physician on an outpatient rather than on an inpatient or residential basis in
72 a hospital, intermediate care facility, or skilled nursing facility. Personal care services shall be
73 rendered by an individual not a member of the participant's family who is qualified to provide
74 such services where the services are prescribed by a physician in accordance with a plan of

75 treatment and are supervised by a licensed nurse. Persons eligible to receive personal care
76 services shall be those persons who would otherwise require placement in a hospital,
77 intermediate care facility, or skilled nursing facility. Benefits payable for personal care services
78 shall not exceed for any one participant one hundred percent of the average statewide charge for
79 care and treatment in an intermediate care facility for a comparable period of time. Such
80 services, when delivered in a residential care facility or assisted living facility licensed under
81 chapter 198 shall be authorized on a tier level based on the services the resident requires and the
82 frequency of the services. A resident of such facility who qualifies for assistance under section
83 208.030 shall, at a minimum, if prescribed by a physician, qualify for the tier level with the
84 fewest services. The rate paid to providers for each tier of service shall be set subject to
85 appropriations. Subject to appropriations, each resident of such facility who qualifies for
86 assistance under section 208.030 and meets the level of care required in this section shall, at a
87 minimum, if prescribed by a physician, be authorized up to one hour of personal care services
88 per day. Authorized units of personal care services shall not be reduced or tier level lowered
89 unless an order approving such reduction or lowering is obtained from the resident's personal
90 physician. Such authorized units of personal care services or tier level shall be transferred with
91 such resident if her or she transfers to another such facility. Such provision shall terminate upon
92 receipt of relevant waivers from the federal Department of Health and Human Services. If the
93 Centers for Medicare and Medicaid Services determines that such provision does not comply
94 with the state plan, this provision shall be null and void. The MO HealthNet division shall notify
95 the revisor of statutes as to whether the relevant waivers are approved or a determination of
96 noncompliance is made;

97 (15) Mental health services. The state plan for providing medical assistance under Title
98 XIX of the Social Security Act, 42 U.S.C. 301, as amended, shall include the following mental
99 health services when such services are provided by community mental health facilities operated
100 by the department of mental health or designated by the department of mental health as a
101 community mental health facility or as an alcohol and drug abuse facility or as a child-serving
102 agency within the comprehensive children's mental health service system established in section
103 630.097. The department of mental health shall establish by administrative rule the definition
104 and criteria for designation as a community mental health facility and for designation as an
105 alcohol and drug abuse facility. Such mental health services shall include:

106 (a) Outpatient mental health services including preventive, diagnostic, therapeutic,
107 rehabilitative, and palliative interventions rendered to individuals in an individual or group
108 setting by a mental health professional in accordance with a plan of treatment appropriately
109 established, implemented, monitored, and revised under the auspices of a therapeutic team as a
110 part of client services management;

111 (b) Clinic mental health services including preventive, diagnostic, therapeutic,
112 rehabilitative, and palliative interventions rendered to individuals in an individual or group
113 setting by a mental health professional in accordance with a plan of treatment appropriately
114 established, implemented, monitored, and revised under the auspices of a therapeutic team as a
115 part of client services management;

116 (c) Rehabilitative mental health and alcohol and drug abuse services including home and
117 community-based preventive, diagnostic, therapeutic, rehabilitative, and palliative interventions
118 rendered to individuals in an individual or group setting by a mental health or alcohol and drug
119 abuse professional in accordance with a plan of treatment appropriately established,
120 implemented, monitored, and revised under the auspices of a therapeutic team as a part of client
121 services management. As used in this section, mental health professional and alcohol and drug
122 abuse professional shall be defined by the department of mental health pursuant to duly
123 promulgated rules. With respect to services established by this subdivision, the department of
124 social services, MO HealthNet division, shall enter into an agreement with the department of
125 mental health. Matching funds for outpatient mental health services, clinic mental health
126 services, and rehabilitation services for mental health and alcohol and drug abuse shall be
127 certified by the department of mental health to the MO HealthNet division. The agreement shall
128 establish a mechanism for the joint implementation of the provisions of this subdivision. In
129 addition, the agreement shall establish a mechanism by which rates for services may be jointly
130 developed;

131 (16) Such additional services as defined by the MO HealthNet division to be furnished
132 under waivers of federal statutory requirements as provided for and authorized by the federal
133 Social Security Act (42 U.S.C. 301, et seq.) subject to appropriation by the general assembly;

134 (17) Beginning July 1, 1990, the services of a certified pediatric or family nursing
135 practitioner with a collaborative practice agreement to the extent that such services are provided
136 in accordance with chapters 334 and 335, and regulations promulgated thereunder;

137 (18) Nursing home costs for participants receiving benefit payments under subdivision
138 (4) of this subsection to reserve a bed for the participant in the nursing home during the time that
139 the participant is absent due to admission to a hospital for services which cannot be performed
140 on an outpatient basis, subject to the provisions of this subdivision:

141 (a) The provisions of this subdivision shall apply only if:

142 a. The occupancy rate of the nursing home is at or above ninety-seven percent of MO
143 HealthNet certified licensed beds, according to the most recent quarterly census provided to the
144 department of health and senior services which was taken prior to when the participant is
145 admitted to the hospital; and

146 b. The patient is admitted to a hospital for a medical condition with an anticipated stay
147 of three days or less;

148 (b) The payment to be made under this subdivision shall be provided for a maximum of
149 three days per hospital stay;

150 (c) For each day that nursing home costs are paid on behalf of a participant under this
151 subdivision during any period of six consecutive months such participant shall, during the same
152 period of six consecutive months, be ineligible for payment of nursing home costs of two
153 otherwise available temporary leave of absence days provided under subdivision (5) of this
154 subsection; and

155 (d) The provisions of this subdivision shall not apply unless the nursing home receives
156 notice from the participant or the participant's responsible party that the participant intends to
157 return to the nursing home following the hospital stay. If the nursing home receives such
158 notification and all other provisions of this subsection have been satisfied, the nursing home shall
159 provide notice to the participant or the participant's responsible party prior to release of the
160 reserved bed;

161 (19) Prescribed medically necessary durable medical equipment. An electronic
162 web-based prior authorization system using best medical evidence and care and treatment
163 guidelines consistent with national standards shall be used to verify medical need;

164 **(20) Subject to appropriations, comprehensive day rehabilitation services beginning**
165 **early posttrauma as part of a coordinated system of care for individuals with disabling**
166 **impairments. Rehabilitation services must be based on an individualized, goal-oriented,**
167 **comprehensive, and coordinated treatment plan developed, implemented, and monitored**
168 **through an interdisciplinary assessment designed to restore an individual to optimal level**
169 **of physical, cognitive, and behavioral function. The MO HealthNet division shall establish**
170 **by administrative rule the definition and criteria for designation of a comprehensive day**
171 **rehabilitation service facility, benefit limitations, and payment mechanism utilizing the**
172 **expertise of brain injury rehabilitation service providers and the Missouri head injury**
173 **advisory council created under section 192.745. Such services shall be provided in a**
174 **community-based facility and be authorized on tier levels based on the services the patient**
175 **requires and the frequency of the services as guided by a qualified rehabilitation**
176 **professional associated with a health care home. Any rule or portion of a rule, as that term**
177 **is defined in section 536.010, that is created under the authority delegated in this**
178 **subdivision shall become effective only if it complies with and is subject to all of the**
179 **provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536**
180 **are nonseverable and if any of the powers vested with the general assembly pursuant to**
181 **chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are**

182 **subsequently held unconstitutional, then the grant of rulemaking authority and any rule**
183 **proposed or adopted after August 28, 2012, shall be invalid and void;**

184 (21) Hospice care. As used in this subdivision, the term "hospice care" means a
185 coordinated program of active professional medical attention within a home, outpatient and
186 inpatient care which treats the terminally ill patient and family as a unit, employing a medically
187 directed interdisciplinary team. The program provides relief of severe pain or other physical
188 symptoms and supportive care to meet the special needs arising out of physical, psychological,
189 spiritual, social, and economic stresses which are experienced during the final stages of illness,
190 and during dying and bereavement and meets the Medicare requirements for participation as a
191 hospice as are provided in 42 CFR Part 418. The rate of reimbursement paid by the MO
192 HealthNet division to the hospice provider for room and board furnished by a nursing home to
193 an eligible hospice patient shall not be less than ninety-five percent of the rate of reimbursement
194 which would have been paid for facility services in that nursing home facility for that patient,
195 in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus Budget
196 Reconciliation Act of 1989);

197 [(21)] (22) Prescribed medically necessary dental services. Such services shall be subject
198 to appropriations. An electronic web-based prior authorization system using best medical
199 evidence and care and treatment guidelines consistent with national standards shall be used to
200 verify medical need;

201 [(22)] (23) Prescribed medically necessary optometric services. Such services shall be
202 subject to appropriations. An electronic web-based prior authorization system using best medical
203 evidence and care and treatment guidelines consistent with national standards shall be used to
204 verify medical need;

205 (24) **Prescribed medically necessary hearing aids. Such services shall be subject to**
206 **appropriations. An electronic web-based prior authorization system using best medical**
207 **evidence and care and treatment guidelines consistent with national standards shall be**
208 **used to verify medical need;**

209 [(23)] (25) Blood clotting products-related services. For persons diagnosed with a
210 bleeding disorder, as defined in section 338.400, reliant on blood clotting products, as defined
211 in section 338.400, such services include:

212 (a) Home delivery of blood clotting products and ancillary infusion equipment and
213 supplies, including the emergency deliveries of the product when medically necessary;

214 (b) Medically necessary ancillary infusion equipment and supplies required to administer
215 the blood clotting products; and

216 (c) Assessments conducted in the participant's home by a pharmacist, nurse, or local
217 home health care agency trained in bleeding disorders when deemed necessary by the
218 participant's treating physician;

219 [(24)] **(26)** The MO HealthNet division shall, by January 1, 2008, and annually
220 thereafter, report the status of MO HealthNet provider reimbursement rates as compared to one
221 hundred percent of the Medicare reimbursement rates and compared to the average dental
222 reimbursement rates paid by third-party payors licensed by the state. The MO HealthNet division
223 shall, by July 1, 2008, provide to the general assembly a four-year plan to achieve parity with
224 Medicare reimbursement rates and for third-party payor average dental reimbursement rates.
225 Such plan shall be subject to appropriation and the division shall include in its annual budget
226 request to the governor the necessary funding needed to complete the four-year plan developed
227 under this subdivision.

228 2. Additional benefit payments for medical assistance shall be made on behalf of those
229 eligible needy children, pregnant women and blind persons with any payments to be made on the
230 basis of the reasonable cost of the care or reasonable charge for the services as defined and
231 determined by the division of medical services, unless otherwise hereinafter provided, for the
232 following:

233 (1) Dental services;

234 (2) Services of podiatrists as defined in section 330.010;

235 (3) Optometric services as defined in section 336.010;

236 (4) Orthopedic devices or other prosthetics, including eye glasses, dentures, hearing aids,
237 and wheelchairs;

238 (5) Hospice care. As used in this subsection, the term "hospice care" means a
239 coordinated program of active professional medical attention within a home, outpatient and
240 inpatient care which treats the terminally ill patient and family as a unit, employing a medically
241 directed interdisciplinary team. The program provides relief of severe pain or other physical
242 symptoms and supportive care to meet the special needs arising out of physical, psychological,
243 spiritual, social, and economic stresses which are experienced during the final stages of illness,
244 and during dying and bereavement and meets the Medicare requirements for participation as a
245 hospice as are provided in 42 CFR Part 418. The rate of reimbursement paid by the MO
246 HealthNet division to the hospice provider for room and board furnished by a nursing home to
247 an eligible hospice patient shall not be less than ninety-five percent of the rate of reimbursement
248 which would have been paid for facility services in that nursing home facility for that patient,
249 in accordance with subsection (c) of Section 6408 of P.L. 101-239 (Omnibus Budget
250 Reconciliation Act of 1989);

251 (6) Comprehensive day rehabilitation services beginning early posttrauma as part of a
252 coordinated system of care for individuals with disabling impairments. Rehabilitation services
253 must be based on an individualized, goal-oriented, comprehensive and coordinated treatment
254 plan developed, implemented, and monitored through an interdisciplinary assessment designed
255 to restore an individual to optimal level of physical, cognitive, and behavioral function. The MO
256 HealthNet division shall establish by administrative rule the definition and criteria for
257 designation of a comprehensive day rehabilitation service facility, benefit limitations and
258 payment mechanism. Any rule or portion of a rule, as that term is defined in section 536.010,
259 that is created under the authority delegated in this subdivision shall become effective only if it
260 complies with and is subject to all of the provisions of chapter 536 and, if applicable, section
261 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the
262 general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove
263 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority
264 and any rule proposed or adopted after August 28, 2005, shall be invalid and void.

265 3. The MO HealthNet division may require any participant receiving MO HealthNet
266 benefits to pay part of the charge or cost until July 1, 2008, and an additional payment after July
267 1, 2008, as defined by rule duly promulgated by the MO HealthNet division, for all covered
268 services except for those services covered under subdivisions (14) and (15) of subsection 1 of
269 this section and sections 208.631 to 208.657 to the extent and in the manner authorized by Title
270 XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.) and regulations thereunder.
271 When substitution of a generic drug is permitted by the prescriber according to section 338.056,
272 and a generic drug is substituted for a name-brand drug, the MO HealthNet division may not
273 lower or delete the requirement to make a co-payment pursuant to regulations of Title XIX of
274 the federal Social Security Act. A provider of goods or services described under this section
275 must collect from all participants the additional payment that may be required by the MO
276 HealthNet division under authority granted herein, if the division exercises that authority, to
277 remain eligible as a provider. Any payments made by participants under this section shall be in
278 addition to and not in lieu of payments made by the state for goods or services described herein
279 except the participant portion of the pharmacy professional dispensing fee shall be in addition
280 to and not in lieu of payments to pharmacists. A provider may collect the co-payment at the time
281 a service is provided or at a later date. A provider shall not refuse to provide a service if a
282 participant is unable to pay a required payment. If it is the routine business practice of a provider
283 to terminate future services to an individual with an unclaimed debt, the provider may include
284 uncollected co-payments under this practice. Providers who elect not to undertake the provision
285 of services based on a history of bad debt shall give participants advance notice and a reasonable
286 opportunity for payment. A provider, representative, employee, independent contractor, or agent

287 of a pharmaceutical manufacturer shall not make co-payment for a participant. This subsection
288 shall not apply to other qualified children, pregnant women, or blind persons. If the Centers for
289 Medicare and Medicaid Services does not approve the Missouri MO HealthNet state plan
290 amendment submitted by the department of social services that would allow a provider to deny
291 future services to an individual with uncollected co-payments, the denial of services shall not be
292 allowed. The department of social services shall inform providers regarding the acceptability
293 of denying services as the result of unpaid co-payments.

294 4. The MO HealthNet division shall have the right to collect medication samples from
295 participants in order to maintain program integrity.

296 5. Reimbursement for obstetrical and pediatric services under subdivision (6) of
297 subsection 1 of this section shall be timely and sufficient to enlist enough health care providers
298 so that care and services are available under the state plan for MO HealthNet benefits at least to
299 the extent that such care and services are available to the general population in the geographic
300 area, as required under subparagraph (a)(30)(A) of 42 U.S.C. 1396a and federal regulations
301 promulgated thereunder.

302 6. Beginning July 1, 1990, reimbursement for services rendered in federally funded
303 health centers shall be in accordance with the provisions of subsection 6402(c) and Section 6404
304 of P.L. 101-239 (Omnibus Budget Reconciliation Act of 1989) and federal regulations
305 promulgated thereunder.

306 7. Beginning July 1, 1990, the department of social services shall provide notification
307 and referral of children below age five, and pregnant, breast-feeding, or postpartum women who
308 are determined to be eligible for MO HealthNet benefits under section 208.151 to the special
309 supplemental food programs for women, infants and children administered by the department
310 of health and senior services. Such notification and referral shall conform to the requirements
311 of Section 6406 of P.L. 101-239 and regulations promulgated thereunder.

312 8. Providers of long-term care services shall be reimbursed for their costs in accordance
313 with the provisions of Section 1902 (a)(13)(A) of the Social Security Act, 42 U.S.C. 1396a, as
314 amended, and regulations promulgated thereunder.

315 9. Reimbursement rates to long-term care providers with respect to a total change in
316 ownership, at arm's length, for any facility previously licensed and certified for participation in
317 the MO HealthNet program shall not increase payments in excess of the increase that would
318 result from the application of Section 1902 (a)(13)(C) of the Social Security Act, 42 U.S.C.
319 1396a (a)(13)(C).

320 10. The MO HealthNet division, may enroll qualified residential care facilities and
321 assisted living facilities, as defined in chapter 198, as MO HealthNet personal care providers.

322 11. Any income earned by individuals eligible for certified extended employment at a
323 sheltered workshop under chapter 178 shall not be considered as income for purposes of
324 determining eligibility under this section.

209.202. 1. Any person who [knowingly, intentionally, or recklessly causes substantial
2 physical injury to or the death of a service dog] , **with reckless disregard, injures or kills or**
3 **permits a dog that he or she owns or is in the immediate control of to injure or kill a service**
4 **animal** is guilty of a class A misdemeanor. [The provisions of this subsection shall not apply
5 to the destruction of a service dog for humane purposes.]

6 2. Any person who [knowingly or intentionally fails to exercise sufficient control over
7 an animal such person owns, keeps, harbors, or exercises control over to prevent the animal from
8 causing the substantial physical injury to or death of a service dog, or the subsequent inability
9 to function as a service dog as a result of the animal's attacking, chasing, or harassing the service
10 dog] , **with reckless disregard, interferes with or permits a dog that he or she owns or is in**
11 **the immediate control of to interfere with the use of a service animal by obstructing,**
12 **intimidating, or otherwise jeopardizing the safety of the service animal or its user is guilty**
13 **of a class B misdemeanor. Any second or subsequent violation of this section** is guilty of
14 a class A misdemeanor.

15 3. Any person who [harasses or chases a dog known to such person to be a service dog
16 is guilty of a class B misdemeanor.

17 4. Any person who owns, keeps, harbors, or exercises control over an animal and who
18 knowingly or intentionally fails to exercise sufficient control over the animal to prevent such
19 animal from chasing or harassing a service dog while such dog is carrying out the dog's function
20 as a service dog, to the extent that the animal temporarily interferes with the service dog's ability
21 to carry out the dog's function is guilty of a class B misdemeanor] **intentionally injures or kills**
22 **or permits a dog that he or she owns or is in the immediate control of to injure or kill a**
23 **service animal is guilty of a class D felony.**

24 5. [An owner of a service dog or a person with a disability who uses a service dog may
25 file a cause of action to recover civil damages against any person who:

26 (1) Violates the provisions of subsection 1 or 2 of this section; or

27 (2) Steals a service dog resulting in the loss of the services of the service dog.

28 6. Any civil damages awarded under subsection 5 of this section shall be based on the
29 following:

30 (1) The replacement value of an equally trained service dog, without any differentiation
31 for the age or experience of the service dog;

32 (2) The cost and expenses incurred by the owner of a service dog or the person with a
33 disability who used the service dog, including:

34 (a) The cost of temporary replacement services, whether provided by another service dog
35 or by a person;

36 (b) The reasonable costs incurred in efforts to recover a stolen service dog; and

37 (c) Court costs and attorney's fees incurred in bringing a civil action under subsection
38 5 of this section.

39 7. An owner of a service dog or a person with a disability who uses a service dog may
40 file a cause of action to recover civil damages against a person who:

41 (1) Violates the provisions of subsections 1 to 4 of this section resulting in injury from
42 which the service dog recovers to an extent that the dog is able to function as a service dog for
43 the person with a disability; or

44 (2) Steals a service dog and the service dog is recovered resulting in the service dog
45 being able to function as a service dog for the person with a disability.

46 8. Any civil damages awarded under subsection 7 of this section shall be based on the
47 following:

48 (1) Veterinary medical expenses;

49 (2) Retraining expenses;

50 (3) The cost of temporary replacement services, whether provided by another service dog
51 or by a person;

52 (4) Reasonable costs incurred in the recovery of the service dog; and

53 (5) Court costs and attorney's fees incurred in bringing the civil action under subsection
54 7 of this section.] **(1) In addition to any other penalty, a person who is convicted of a
55 violation of this section shall make full restitution for all damages that arise out of or are
56 related to the offense, including but not limited to incidental and consequential damages
57 incurred by the service animal's user.**

58 **(2) Restitution includes, but is not limited to:**

59 **(a) The value of the animal;**

60 **(b) Replacement and training or retraining expenses for the service animal and the
61 user;**

62 **(c) Veterinary and other medical and boarding expenses for the service animal;**

63 **(d) Medical expenses for the user; and**

64 **(e) Lost wages or income incurred by the user during any period that the user is
65 without the services of the service animal.**

66 [9.] **6.** The provisions of this section shall not apply:

67 **(1) If a person with a disability, an owner, or a person having custody or supervision of
68 a service dog commits criminal or civil trespass; or**

69 **(2) To the destruction of a service dog for humane purposes.**

70 [10.] 7. Nothing in this section shall be construed to preclude any other remedies
71 available at law.

288.034. 1. "Employment" means service, including service in interstate commerce,
2 performed for wages or under any contract of hire, written or oral, express or implied, and
3 notwithstanding any other provisions of this section, service with respect to which a tax is
4 required to be paid under any federal unemployment tax law imposing a tax against which credit
5 may be taken for contributions required to be paid into a state unemployment fund or which, as
6 a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act,
7 is required to be covered under this law.

8 2. The term "employment" shall include an individual's entire service, performed within
9 or both within and without this state if:

10 (1) The service is localized in this state; or

11 (2) The service is not localized in any state but some of the service is performed in this
12 state and the base of operations, or, if there is no base of operations, then the place from which
13 such service is directed or controlled, is in this state; or the base of operations or place from
14 which such service is directed or controlled is not in any state in which some part of the service
15 is performed but the individual's residence is in this state.

16 3. Service performed by an individual for wages shall be deemed to be employment
17 subject to this law:

18 (1) If covered by an election filed and approved pursuant to subdivision (2) of subsection
19 3 of section 288.080;

20 (2) If covered by an arrangement pursuant to section 288.340 between the division and
21 the agency charged with the administration of any other state or federal unemployment insurance
22 law, pursuant to which all services performed by an individual for an employing unit are deemed
23 to be performed entirely within this state.

24 4. Service shall be deemed to be localized within a state if the service is performed
25 entirely within such state; or the service is performed both within and without such state, but the
26 service performed without such state is incidental to the individual's service within the state; for
27 example, is temporary or transitory in nature or consists of isolated transactions.

28 5. Service performed by an individual for remuneration shall be deemed to be
29 employment subject to this law unless it is shown to the satisfaction of the division that such
30 services were performed by an independent contractor. In determining the existence of the
31 independent contractor relationship, the common law of agency right to control shall be applied.
32 The common law of agency right to control test shall include but not be limited to: if the alleged
33 employer retains the right to control the manner and means by which the results are to be

34 accomplished, the individual who performs the service is an employee. If only the results are
35 controlled, the individual performing the service is an independent contractor.

36 6. The term "employment" shall include service performed for wages as an agent-driver
37 or commission-driver engaged in distributing meat products, vegetable products, fruit products,
38 bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his or her
39 principal; or as a traveling or city salesman, other than as an agent-driver or commission-driver,
40 engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her
41 principal (except for sideline sales activities on behalf of some other person) of orders from
42 wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar
43 establishments for merchandise for resale or supplies for use in their business operations,
44 provided:

45 (1) The contract of service contemplates that substantially all of the services are to be
46 performed personally by such individual; and

47 (2) The individual does not have a substantial investment in facilities used in connection
48 with the performance of the services (other than in facilities for transportation); and

49 (3) The services are not in the nature of a single transaction that is not part of a
50 continuing relationship with the person for whom the services are performed.

51 7. Service performed by an individual in the employ of this state or any political
52 subdivision thereof or any instrumentality of any one or more of the foregoing which is wholly
53 owned by this state and one or more other states or political subdivisions, or any service
54 performed in the employ of any instrumentality of this state or of any political subdivision
55 thereof, and one or more other states or political subdivisions, provided that such service is
56 excluded from employment as defined in the Federal Unemployment Tax Act by Section
57 3306(c)(7) of that act and is not excluded from employment pursuant to subsection 9 of this
58 section, shall be employment subject to this law.

59 8. Service performed by an individual in the employ of a corporation or any community
60 chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific,
61 testing for public safety, literary, or educational purposes, or for the prevention of cruelty to
62 children or animals, no part of the net earnings of which inures to the benefit of any private
63 shareholder or individual, or other organization described in Section 501(c)(3) of the Internal
64 Revenue Code which is exempt from income tax under Section 501(a) of that code if the
65 organization had four or more individuals in employment for some portion of a day in each of
66 twenty different weeks whether or not such weeks were consecutive within a calendar year
67 regardless of whether they were employed at the same moment of time shall be employment
68 subject to this law.

69 9. For the purposes of subsections 7 and 8 of this section, the term "employment" does
70 not apply to service performed:

71 (1) In the employ of a church or convention or association of churches, or an
72 organization which is operated primarily for religious purposes and which is operated,
73 supervised, controlled, or principally supported by a church or convention or association of
74 churches; or

75 (2) By a duly ordained, commissioned, or licensed minister of a church in the exercise
76 of such minister's ministry or by a member of a religious order in the exercise of duties required
77 by such order; or

78 (3) In the employ of a governmental entity referred to in subdivision (3) of subsection
79 1 of section 288.032 if such service is performed by an individual in the exercise of duties:

80 (a) As an elected official;

81 (b) As a member of a legislative body, or a member of the judiciary, of a state or political
82 subdivision;

83 (c) As a member of the state national guard or air national guard;

84 (d) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake,
85 flood or similar emergency;

86 (e) In a position which, under or pursuant to the laws of this state, is designated as (i) a
87 major nontenured policy-making or advisory position, or (ii) a policy-making or advisory
88 position the performance of the duties of which ordinarily does not require more than eight hours
89 per week; or

90 (4) In a facility conducted for the purpose of carrying out a program of rehabilitation for
91 individuals whose earning capacity is impaired by age or physical or mental deficiency or injury
92 or providing remunerative work for individuals who because of their impaired physical or mental
93 capacity cannot be readily absorbed in the competitive labor market, by an individual receiving
94 such rehabilitation or remunerative work; or

95 (5) As part of an unemployment work-relief or work-training program assisted or
96 financed in whole or in part by any federal agency or an agency of a state or political subdivision
97 thereof, by an individual receiving such work relief or work training; or

98 (6) By an inmate of a custodial or penal institution; or

99 (7) In the employ of a school, college, or university, if such service is performed (i) by
100 a student who is enrolled and is regularly attending classes at such school, college, or university,
101 or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse
102 commences to perform such service, that (I) the employment of such spouse to perform such
103 service is provided under a program to provide financial assistance to such student by such

104 school, college, or university, and (II) such employment will not be covered by any program of
105 unemployment insurance.

106 10. The term "employment" shall include the service of an individual who is a citizen
107 of the United States, performed outside the United States (except in Canada), if:

108 (1) The employer's principal place of business in the United States is located in this state;
109 or

110 (2) The employer has no place of business in the United States, but:

111 (a) The employer is an individual who is a resident of this state; or

112 (b) The employer is a corporation which is organized under the laws of this state; or

113 (c) The employer is a partnership or a trust and the number of the partners or trustees
114 who are residents of this state is greater than the number who are residents of any one other state;
115 or

116 (3) None of the criteria of subdivisions (1) and (2) of this subsection is met but the
117 employer has elected coverage in this state or, the employer having failed to elect coverage in
118 any state, the individual has filed a claim for benefits, based on such service, under the law of
119 this state;

120 (4) As used in this subsection and in subsection 11 of this section, the term "United
121 States" includes the states, the District of Columbia and the Commonwealth of Puerto Rico.

122 11. An "American employer", for the purposes of subsection 10 of this section, means
123 a person who is:

124 (1) An individual who is a resident of the United States; or

125 (2) A partnership, if two-thirds or more of the partners are residents of the United States;
126 or

127 (3) A trust, if all of the trustees are residents of the United States; or

128 (4) A corporation organized under the laws of the United States or of any state.

129 12. The term "employment" shall not include:

130 (1) Service performed by an individual in agricultural labor;

131 (a) For the purposes of this subdivision, the term "agricultural labor" means remunerated
132 service performed:

133 a. On a farm, in the employ of any person, in connection with cultivating the soil, or in
134 connection with raising or harvesting any agricultural or horticultural commodity, including the
135 raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and
136 furbearing animals and wildlife;

137 b. In the employ of the owner or tenant or other operator of a farm, in connection with
138 the operation, management, conservation, improvement, or maintenance of such farm and its

139 tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a
140 hurricane, if the major part of such service is performed on a farm;

141 c. In connection with the production or harvesting of any commodity defined as an
142 agricultural commodity in Section 15(g) of the Federal Agricultural Marketing Act, as amended
143 (46 Stat. 1550, Sec. 3; 12 U.S.C. 1441j), or in connection with the ginning of cotton, or in
144 connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not
145 owned or operated for profit, used exclusively for supplying and storing water for farming
146 purposes;

147 d. (i) In the employ of the operator of a farm in handling, planting, drying, packing,
148 packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a
149 carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural
150 commodity; but only if such operator produced more than one-half of the commodity with
151 respect to which such service is performed;

152 (ii) In the employ of a group of operators of farms (or a cooperative organization of
153 which such operators are members) in the performance of services described in item (i) of this
154 subparagraph, but only if such operators produced more than one-half of the commodity with
155 respect to which such service is performed;

156 (iii) The provisions of items (i) and (ii) of this subparagraph shall not be deemed to be
157 applicable with respect to service performed in connection with commercial canning or
158 commercial freezing or in connection with any agricultural or horticultural commodity after its
159 delivery to a terminal market for distribution for consumption; or

160 e. On a farm operated for profit if such service is not in the course of the employer's trade
161 or business. As used in this paragraph, the term "farm" includes stock, dairy, poultry, fruit,
162 furbearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other
163 similar structures, used primarily for the raising of agricultural or horticultural commodities, and
164 orchards;

165 (b) The term "employment" shall include service performed after December 31, 1977,
166 by an individual in agricultural labor as defined in paragraph (a) of this subdivision when such
167 service is performed for a person who, during any calendar quarter, paid remuneration in cash
168 of twenty thousand dollars or more to individuals employed in agricultural labor or for some
169 portion of a day in a calendar year in each of twenty different calendar weeks, whether or not
170 such weeks were consecutive, employed in agricultural labor ten or more individuals, regardless
171 of whether they were employed at the same moment of time;

172 (c) For the purposes of this subsection any individual who is a member of a crew
173 furnished by a crew leader to perform service in agricultural labor for any other person shall be
174 considered as employed by such crew leader:

- 175 a. If such crew leader holds a valid certificate of registration under the Farm Labor
176 Contractor Registration Act of 1963; or substantially all the members of such crew operate or
177 maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized
178 equipment, which is provided by such crew leader; and
- 179 b. If such individual is not in employment by such other person;
- 180 c. If any individual is furnished by a crew leader to perform service in agricultural labor
181 for any other person and that individual is not in the employment of the crew leader:
- 182 (i) Such other person and not the crew leader shall be treated as the employer of such
183 individual; and
- 184 (ii) Such other person shall be treated as having paid cash remuneration to such
185 individual in an amount equal to the amount of cash remuneration paid to such individual by the
186 crew leader (either on his or her own behalf or on behalf of such other person) for the service in
187 agricultural labor performed for such other person;
- 188 d. For the purposes of this subsection, the term "crew leader" means an individual who:
- 189 (i) Furnishes individuals to perform service in agricultural labor for any other person;
- 190 (ii) Pays (either on his or her own behalf or on behalf of such other person) the
191 individuals so furnished by him or her for the service in agricultural labor performed by them;
192 and
- 193 (iii) Has not entered into a written agreement with such other person under which such
194 individual is designated as in employment by such other person;
- 195 (2) Domestic service in a private home except as provided in subsection 13 of this
196 section;
- 197 (3) Service performed by an individual under the age of eighteen years in the delivery
198 or distribution of newspapers or shopping news but shall not include delivery or distribution to
199 any point for subsequent delivery or distribution;
- 200 (4) Service performed by an individual in, and at the time of, the sale of newspapers or
201 magazines to ultimate consumers under an arrangement under which the newspapers or
202 magazines are to be sold by him or her at a fixed price, his or her compensation being based on
203 the retention of the excess of such price over the amount at which the newspapers or magazines
204 are charged to him or her, whether or not he or she is guaranteed a minimum amount of
205 compensation for such service, or is entitled to be credited with the unsold newspapers or
206 magazines turned back;
- 207 (5) Service performed by an individual in the employ of his or her son, daughter, or
208 spouse, and service performed by a child under the age of twenty-one in the employ of his or her
209 father or mother;

210 (6) Except as otherwise provided in this law, service performed in the employ of a
211 corporation, community chest, fund or foundation, organized and operated exclusively for
212 religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty
213 to children or animals, no part of the net earnings of which inures to the benefit of any private
214 shareholder or individual;

215 (7) Services with respect to which unemployment insurance is payable under an
216 unemployment insurance system established by an act of Congress;

217 (8) Service performed in the employ of a foreign government;

218 (9) Service performed in the employ of an instrumentality wholly owned by a foreign
219 government:

220 (a) If the service is of a character similar to that performed in foreign countries by
221 employees of the United States government or of an instrumentality thereof; and

222 (b) If the division finds that the foreign government, with respect to whose
223 instrumentality exemption is claimed, grants an equivalent exemption with respect to similar
224 service performed in the foreign country by employees of the United States government and of
225 instrumentalities thereof. The certification of the United States Secretary of State to the United
226 States Secretary of Treasury shall constitute prima facie evidence of such equivalent exemption;

227 (10) Service covered by an arrangement between the division and the agency charged
228 with the administration of any other state or federal unemployment insurance law pursuant to
229 which all services performed by an individual for an employing unit during the period covered
230 by the employing unit's approved election are deemed to be performed entirely within the
231 jurisdiction of such other state or federal agency;

232 (11) Service performed in any calendar quarter in the employ of a school, college or
233 university not otherwise excluded, if such service is performed by a student who is enrolled and
234 regularly attending classes at such school, college, or university, and the remuneration for such
235 service does not exceed fifty dollars (exclusive of board, room, and tuition);

236 (12) Service performed by an individual for a person as a licensed insurance agent, a
237 licensed insurance broker, or an insurance solicitor, if all such service performed by such
238 individual for such person is performed for remuneration solely by way of commissions;

239 (13) Domestic service performed in the employ of a local college club or of a local
240 chapter of a college fraternity or sorority, except as provided in subsection 13 of this section;

241 (14) Services performed after March 31, 1982, in programs authorized and funded by
242 the Comprehensive Employment and Training Act by participants of such programs, except those
243 programs with respect to which unemployment insurance coverage is required by the
244 Comprehensive Employment and Training Act or regulations issued pursuant thereto;

245 (15) Service performed by an individual who is enrolled at a nonprofit or public
246 educational institution which normally maintains a regular faculty and curriculum and normally
247 has a regularly organized body of students in attendance at the place where its educational
248 activities are carried on, as a student in a full-time program, taken for credit at such institution,
249 which combines academic instruction with work experience, if such service is an integral part
250 of such program, and such institution has so certified to the employer; except, that this
251 subdivision shall not apply to service performed in a program established for or on behalf of an
252 employer or group of employers;

253 (16) Services performed by a licensed real estate salesperson or licensed real estate
254 broker if substantially all of the remuneration, whether or not paid in cash, for the services
255 performed, rather than to the number of hours worked, is directly related to sales or other output,
256 including the performance of services, performed pursuant to a written contract between such
257 individual and the person for whom the services are performed and such contract provides that
258 the individual will not be treated as an employee with respect to such services for federal tax
259 purposes;

260 (17) Services performed as a direct seller who is engaged in the trade or business of the
261 delivering or distribution of newspapers or shopping news, including any services directly related
262 to such trade or business, or services performed as a direct seller who is engaged in the trade or
263 business of selling, or soliciting the sale of, consumer products in the home or otherwise than in,
264 or affiliated with, a permanent, fixed retail establishment, if eighty percent or more of the
265 remuneration, whether or not paid in cash, for the services performed rather than the number of
266 hours worked is directly related to sales performed pursuant to a written contract between such
267 direct seller and the person for whom the services are performed, and such contract provides that
268 the individual will not be treated as an employee with respect to such services for federal tax
269 purposes;

270 (18) Services performed as a volunteer research subject who is paid on a per-study basis
271 for scientific, medical or drug-related testing for any organization other than one described in
272 Section 501(c)(3) of the Internal Revenue Code or any governmental entity.

273 13. The term "employment" shall include domestic service as defined in subdivisions
274 (2) and (13) of subsection 12 of this section performed after December 31, 1977, if the
275 employing unit for which such service is performed paid cash wages of one thousand dollars or
276 more for such services in any calendar quarter after December 31, 1977.

277 14. The term "employment" shall include or exclude the entire service of an individual
278 for an employing unit during a pay period in which such individual's services are not all excluded
279 under the foregoing provisions, on the following basis: if the services performed during one-half
280 or more of any pay period constitute employment as otherwise defined in this law, all the

281 services performed during such period shall be deemed to be employment; but if the services
282 performed during more than one-half of any such pay period do not constitute employment as
283 otherwise defined in this law, then none of the services for such period shall be deemed to be
284 employment. (As used in this subsection, the term "pay period" means a period of not more than
285 thirty-one consecutive days for which a payment of remuneration is ordinarily made to the
286 individual by the employing unit employing such individual.) This subsection shall not be
287 applicable with respect to service performed in a pay period where any such service is excluded
288 pursuant to subdivision (8) of subsection 12 of this section.

289 15. The term "employment" shall not include the services of a full-time student who
290 performed such services in the employ of an organized summer camp for less than thirteen
291 calendar weeks in such calendar year.

292 16. For the purpose of subsection 15 of this section, an individual shall be treated as a
293 full-time student for any period:

294 (1) During which the individual is enrolled as a full-time student at an educational
295 institution; or

296 (2) Which is between academic years or terms if:

297 (a) The individual was enrolled as a full-time student at an educational institution for the
298 immediately preceding academic year or term; and

299 (b) There is a reasonable assurance that the individual will be so enrolled for the
300 immediately succeeding academic year or term after the period described in paragraph (a) of this
301 subdivision.

302 17. For the purpose of subsection 15 of this section, an "organized summer camp" shall
303 mean a summer camp which:

304 (1) Did not operate for more than seven months in the calendar year and did not operate
305 for more than seven months in the preceding calendar year; or

306 (2) Had average gross receipts for any six months in the preceding calendar year which
307 were not more than thirty-three and one-third percent of its average gross receipts for the other
308 six months in the preceding calendar year.

309 18. The term "employment" shall not mean service performed by a remodeling
310 salesperson acting as an independent contractor; however, if the federal Internal Revenue Service
311 determines that a contractual relationship between a direct provider and an individual acting as
312 an independent contractor pursuant to the provisions of this subsection is in fact an
313 employer-employee relationship for the purposes of federal law, then that relationship shall be
314 considered as an employer-employee relationship for the purposes of this chapter.

315 **19. The term "employment" shall not mean in-home or community-based services**
316 **performed by a provider contracted to provide such services for the clients of a county**

317 **board for developmental disability services organized and existing under sections 205.968**
318 **to 205.973, provided however, that the vendor shall perform the payroll and fringe benefits**
319 **accounting functions for the consumer.**

304.028. 1. **(1)** There is hereby created in the state treasury for use by the department
2 of health and senior services a fund to be known as the "Brain Injury Fund". All judgments
3 collected pursuant to this section, federal grants, private donations and any other moneys
4 designated for the brain injury fund shall be deposited in the fund. Moneys deposited in the fund
5 shall, upon appropriation by the general assembly to the department of health and senior services,
6 be received and expended by the department for the purpose of transition [and] , integration, **and**
7 **provision of [medical] community-based consumer services in comprehensive brain injury**
8 **day rehabilitation therapy, vocational, home and community support**, social and educational
9 [services or] activities for purposes of outreach and supports to enable individuals with
10 [traumatic] brain injury and their families to live in the community.

11 **(2)** The department of health and senior services, in cooperation with the
12 department of social services, shall seek waivers from the federal Department of Health
13 and Human Services to allow moneys from the brain injury fund to be used under the MO
14 HealthNet program to provide services under this section. Upon the granting of such
15 waiver, fifty percent of all moneys in the fund shall be designated as MO HealthNet federal
16 match moneys under the waiver. The waivers under this subdivision shall be designed so
17 that parity is established in funding for each of the eligible MO HealthNet service areas to
18 create a balance for access to all brain injury services.

19 **(3)** A committee shall be created to develop service descriptions, regulations, and
20 parity of funding for eligible MO HealthNet service areas, as needed. The ten-member
21 volunteer committee shall be organized by the department and shall be comprised of two
22 representatives from each of the following: Missouri Association of Rehabilitation
23 Facilities, the Brain Injury Association, the Brain Injury Advisory Council, the department
24 of social services, and the department of health and senior services. The committee
25 composition shall include at least one individual with a brain injury. Once services are
26 established under this section, the committee shall, at a minimum, meet annually to review
27 services using the most current department of health and senior services brain injury needs
28 assessment. The review process shall require the ten-member volunteer committee to be
29 responsible for addressing any modifications needed in the program services. Such review
30 process shall ensure services are meeting the needs of brain injury consumers.

31 **(4)** Notwithstanding the provisions of section 33.080 to the contrary, any unexpended
32 balance in the brain injury fund at the end of any biennium shall not be transferred to the general
33 revenue fund.

34 2. In all criminal cases including violations of any county ordinance or any violation of
35 criminal or traffic laws of this state, including an infraction, there shall be assessed as costs a
36 surcharge in the amount of [two] **ten** dollars. No such surcharge shall be collected in any
37 proceeding involving a violation of an ordinance or state law when the proceeding or defendant
38 has been dismissed by the court or when costs are to be paid by the state, county or municipality.

39 3. Such surcharge shall be collected and distributed by the clerk of the court as provided
40 in sections 488.010 to 488.020. The surcharge collected pursuant to this section shall be paid
41 to the state treasury to the credit of the brain injury fund established in this section.

 Section B. The provisions of section 161.870 of this act shall terminate on January 1,
2 2013.

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